

Remarks

Reconsideration of this Application is respectfully requested.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejection under 35 U.S.C. § 103(a), claims 1, 4, and 9-10

The rejection of claims 1, 4, and 9-10 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Warrington, WO 03/037084 ("Warrington") in view of Dutzmann *et al.*, *British Crop Protection Council Conference – Pests & Diseases* 1:365-370 (2002) ("Dutzmann") is respectfully traversed.

Applicants respectfully submit that Warrington teaches a concentrated pesticidal solution comprising one or more water-insoluble pesticides and lignan, dissolved in a water miscible, polar solvent. Warrington differs from the claimed invention because, among other reasons, Warrington does not disclose fluoxastrobin. Furthermore, Warrington *requires* the presence of lignan in its pesticidal solution, which is not present in the claimed invention.

Additionally, claim 1 as amended includes the recitation "wherein the formulation contains at least one ethylene diamine alkoxyate derivative." Therefore, not only is Warrington silent regarding fluoxastrobin, it also does not disclose a formulation containing at least one ethylene diamine alkoxyate derivative.

Dutzmann does not cure the deficiencies of Warrington. Dutzmann also does not provide a rationale for adding at least one ethylene diamine alkoxyate derivative to their fungicidal formulations. Moreover, both Warrington and Dutzmann are silent about the

concept of stabilizing fluoxastrobin containing formulations with such an additive. One of ordinary skill in the art, therefore, would find no rationale from Warrington or Dutzmann, in combination or alone, to make the formulations of the claimed invention. Consequently, one of ordinary skill in the art would have no expectation of success in making the formulations of the current application.

Applicants respectfully request that the rejection be withdrawn and that the application be allowed.

Rejection under 35 U.S.C. § 103(a), claims 2-3

The rejection of claims 2-3 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Warrington in view of Dutzmann and further in view of Griffiths *et al.*, US 6,248,695 ("Griffiths") is respectfully traversed. Claim 2 has been cancelled, rendering this rejection moot with regard to that claim.

Griffiths teaches an herbicidal formulation comprising glyphosate herbicides and alkyl diamine tetraalkoxylate. Griffiths differs from the claimed invention because, among other things, Griffiths teaches the use of glyphosate herbicides, whereas claim 3 is directed to fluoxastrobin in combination with an ethylene diamine alkoxylate and Synperonic T/304[®].

The Office is of the opinion that Griffiths remedies the deficiencies of Warrington because Griffiths teaches that alkyldiamine tetraalkoxylate surfactants are compatible with horticultural/industrial type formulations. However, Griffiths teachings are specific to formulations of glyphosate herbicides (Griffiths, col. 4, lns. 24-31). Griffiths does not provide any rationale to one of ordinary skill in the art to use ethylene diamine alkoxylate surfactants for the agrochemical formulations of the current

application. Moreover, the Office has improperly generalized Griffiths's use of ethylene diamine alkoxyates to be useful with all agrochemical formulations. Griffiths instead teaches the use of ethylene diamine alkoxyate surfactants to be compatible with horticultural/industrial type formulations containing glyphosate as the herbicide, and provides no rationale to combine ethylene diamine alkoxyate surfactants with any other herbicide. Consequently, one of ordinary skill in the art would have no expectation of success in making the formulations of the current application. Accordingly, the Office has failed to present a valid case of *prima facie* obviousness.

Applicants respectfully request that the rejection be withdrawn and that the application be allowed.

Rejection under 35 U.S.C. § 103(a), claim 6

The rejection of claim 6 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Warrington in view of Dutzmann in further view of Cotter *et al.*, US 6,277,856 ("Cotter") is respectfully traversed.

Cotter teaches a combination of trifloxystrobin; a synthetic strobilurine derivative such as fluoxistrobin; and a synergistically effective amount of an azolopyrimidine. In other words, Cotter teaches that the combination of a compound such as fluoxistrobin with an azolopyrimidine produces a greater fungicidal effect than the sum of the two parts (i.e., "synergistically effective"). Cotter differs from claim 6 because, among other things, Cotter teaches synergistic formulations which require at least one azolopyrimidine. The Office states, in essence, that Cotter cures the deficiencies of Warrington and Dutzmann because Cotter teaches using trifloxystrobin. However,

Cotter does not teach formulations wherein azolopyrimidines are not present nor does it provide any rationale to produce such formulations.

Additionally, claim 1 as amended includes the recitation "wherein the formulation contains at least one ethylene diamine alkoxylate derivative." Warrington, Dutzmann, and Cotter, neither separately nor in any combination, provide a rationale for adding at least one ethylene diamine alkoxylate derivative to their fungicidal formulations. Moreover, Warrington, Dutzmann, and Cotter are silent about the concept of stabilizing fluoxastrobin containing formulations with such an additive. Consequently, one of ordinary skill in the art would have no expectation of success in making the formulations of the current application.

Applicants respectfully request that the rejection be withdrawn and that the application be allowed.

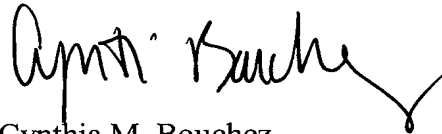
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read 'Cynthia M. Bouchez', with a stylized flourish at the end.

Cynthia M. Bouchez
Attorney for Applicants
Registration No. 47,438

Date: December 15, 2008

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

909170_1.DOC